

ESTTA Tracking number: **ESTTA557820**Filing date: **09/04/2013**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	William A. Gaines Agent, Inc.		
Entity	Corporation	Citizenship	New York
Address	3975 Little John Drive York, PA 17408 UNITED STATES		

Attorney information	Joseph J. Villapol Ladas & Parry LLP 1040 Avenue of the Americas New York, NY 10018-3738 UNITED STATES jvillapol@ladas.com, rroa@ladas.com, mmercado@ladas.com Phone: (212) 708-1865
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**Registration Subject to Cancellation**

Registration No	3593018	Registration date	03/17/2009
Registrant	Tales From The Crypt Holdings c/o Silver Pictures 400 Warner Boulevard, Bldg. 90 Burbank, CA 91522 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 041. First Use: 2005/07/12 First Use In Commerce: 2005/07/12 All goods and services in the class are cancelled, namely: Entertainment in the nature of on-going television programs in the field of variety, comedy and horror; production of television programs; entertainment, namely, a continuing variety, comedy and horror show broadcast over television, satellite, audio, and video media; film distribution; and motion picture film production
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**Grounds for Cancellation**

Abandonment	Trademark Act section 14
Priority and likelihood of confusion	Trademark Act section 2(d)
Other	Respondent was never the owner of the mark. Therefore, Respondent's registration is void ab initio.

**Marks Cited by Petitioner as Basis for Cancellation**

U.S. Registration No.	4250275	Application Date	03/17/2011
Registration Date	11/27/2012	Foreign Priority	NONE

		Date	
Word Mark	TALES FROM THE CRYPT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 016. First use: First Use: 1950/11/30 First Use In Commerce: 1950/11/30 Series of fiction works, namely, novels, books, comics, and magazines Class 025. First use: First Use: 1999/00/00 First Use In Commerce: 1999/00/00 Shirts; clothing, namely, jackets, ties, socks and belts; headwear; footwear		

U.S. Application No.	85269300	Application Date	03/17/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	TALES FROM THE CRYPT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 041. First use: Entertainment services in the nature of creation and development of concepts for and production of motion pictures and television; entertainment production services for motion pictures, television and internet; production of DVDs and other recorded media featuring horror; entertainment services, namely, providing temporary use of non-downloadable video games, providing on-line, non-downloadable virtual clothing and publications for use in virtual environments created for entertainment purposes, providing virtual environments in which users can interact for recreational, leisure or entertainment purposes, providing online non-downloadable comic books and graphic novels, provision of non-downloadable films, television and movies via a video-on-demand service; motion picture and video rental services, rental of computer game programs, sound recordings, and pre-recorded videos that may be downloaded from an Internet web site		

U.S. Application No.	85269766	Application Date	03/17/2011
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	THE CRYPT-KEEPER		
Design Mark			
Description of Mark	The mark consists of an image of the head and upper body of a man above the term THE CRYPT-KEEPER.		
Goods/Services	Class 016. First use: First Use: 1953/03/00 First Use In Commerce: 1953/03/00 Series of fiction works, namely, novels, books, comics, and magazines Class 025. First use: First Use: 2006/00/00 First Use In Commerce: 2006/00/00 Shirts; clothing, namely, jackets, ties, socks, belts; headwear; footwear		

Attachments	Petition for Cancellation - Tales from the Crypt Holdings.pdf(400942 bytes )
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## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joseph J. Villapol/
Name	Joseph J. Villapol
Date	09/04/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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WILLIAM M. GAINES AGENT, INC.,	:	
	:	
Petitioner,	:	Cancellation No. _____
	:	
v.	:	
	:	
TALES FROM THE CRYPT HOLDINGS,	:	
	:	
Respondent.	:	
-----X		

**PETITION FOR CANCELLATION**

In the matter of Registration No. 3,593,018 for the service mark THE CRYPTKEEPER covering "entertainment in the nature of on-going television programs in the field of variety, comedy and horror; production of television programs; entertainment, namely, a continuing variety, comedy and horror show broadcast over television, satellite, audio, and video media; film distribution; and motion picture film production" in Class 41, which registration issued on March 17, 2009 and is owned by Tales from the Crypt Holdings, a California joint venture with an address at c/o Silver Pictures, 400 Warner Blvd, Burbank, California;

Petitioner, William Gaines Agent, Inc., a New York corporation with an address at 3975 Little John Drive, York, Pennsylvania, believes that it is or will be damaged by continued registration of No. 3,593,018 and hereby petitions for cancellation of same on the following grounds:

1. Petitioner is the owner of the rights to the world-famous *Tales from the Crypt* horror comic anthology first published in the 1950's, the editor and publisher of which was the late William M. Gaines, who is also the named petitioner's predecessor-in-interest (the named petitioner and its predecessors-in-interest are collectively referred to as "Petitioner").

2. Since that time, Petitioner has exploited, and continues to exploit, the *Tales from the Crypt* works and their various characters, including The Crypt-Keeper, in a variety of media and merchandising efforts, including through a licensing arrangement with respondent.

3. By virtue of its use and licensing of the *Tales from the Crypt* works, Petitioner has acquired rights in the marks TALES FROM THE CRYPT and THE CRYPT-KEEPER for, among others, books and magazines, clothing articles and entertainment services, including Reg. No. 4,250,275 and Application No. 85/269,300 (both for the former mark) as well as Application No. 85/269,766 (for the latter mark).

4. Petitioner's THE CRYPT-KEEPER Application No. 85/269,766 has been refused registration by the United States Patent and Trademark Office on the grounds of confusing similarity with respondent's THE CRYPTKEEPER Registration No. 3,593,018.

5. On information and belief, any right that respondent had to use THE CRYPTKEEPER was solely pursuant to its licensing arrangement with Petitioner. Petitioner never assigned to respondent the mark THE CRYPTKEEPER for any goods or services, including those covered by respondent's Registration No. 3,593,018. Accordingly, respondent was never the owner of the trademark THE CRYPTKEEPER, and its Registration No. 3,593,018 is void *ab initio*.

6. On information and belief, respondent has never used, or has ceased using, the mark THE CRYPTKEEPER in connection with the services covered by its Registration No. 3,593,018, and further has no intention to use such mark in the future. Accordingly, respondent has abandoned any rights it may have had in the subject mark.

7. If as contended by the Examining Attorney there is a likelihood of confusion between the marks covered by Petitioner's Application No. 85/269,766 and respondent's Registration No. 3,593,018, then Petitioner has superior rights by virtue of its prior and longstanding use of the mark THE CRYPT-KEEPER, including through its licensees, for products and services identical or closely related to those of respondent.

WHEREFORE, Petitioner requests that its petition for cancellation be granted and that respondent's Registration No. 3,593,018 be canceled.

Respectfully submitted,

LADAS & PARRY LLP  
Attorneys for Petitioner

Dated: September 4, 2013

By: 

Joseph J. Villapol  
Ralph H. Cathcart  
Lanning G. Bryer  
1040 Avenue of the Americas  
New York, NY 10018  
(212) 708-1865

**CERTIFICATE OF TRANSMISSION**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **PETITION FOR CANCELLATION** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: September 4, 2013

  
Reinaldo M. Roa

**CERTIFICATE OF SERVICE**

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **PETITION FOR CANCELLATION** was served on the person(s) listed below by First-Class Mail, postage prepaid, on the date indicated below:

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Dated: September 4, 2013

  
Reinaldo M. Roa